

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2259 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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RAMNARAYAN R MISHRA & 51 - Petitioner(s)

Versus

STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :

MR TR MISHRA for Petitioner(s) : 1,

MR DIPEN DESAI, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/03/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226
of the Constitution of India, the petitioner has
prayed for appropriate writ, direction or order

directing the respondents to release retiral benefits like Provident Fund, Gratuity, Leave Encashment etc. and also to grant pension. The petitioner has also further prayed for an appropriate order quashing and setting aside the charge-sheet dated 07.09.1996.

2. It is the case on behalf of the petitioner that he was appointed in the year 1951 as a Peon in the subordinate Cadre and later on in the year 1966, he came to be posted as Lift-man in the Civil Hospital; that, he was holding the certificate of Wireman and he came to be promoted as Wireman in the year 1994. That he has been retired from the service *vide* letter dated 30.10.1996 and before that at the fag end of his service, the petitioner has been served with charge-sheet dated 07.09.1996 alleging *inter-alia* that the petitioner has produced forged documents of birth date and has tempered with Government record and though the petitioner was to be superannuated on 01.02.1992, he has been wrongly continued; as per the School Leaving Certificate his date of birth is 01.01.1934 and in the service record his date of birth was 01.07.1929 and the petitioner has tempered with the same and it was changed to 01.07.1939; the petitioner has entered service on

12.05.1951. Therefore, if the date of birth of the petitioner is 01.07.1939, he could not have joined on 12.05.1951. On the basis of said charge-sheet dated 07.09.1996, when the petitioner was retired on 30.10.1996, the petitioner has not been paid retiral benefits and pension has not been fixed and, therefore, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. It is required to be noted, during the pendency of the petition, the petitioner has been paid provisional pension. Mr. T.R.Mishra, learned Advocate appearing on behalf of the petitioner has vehemently submitted that at the time of entering the service, the petitioner had produced relevant documentary evidence and, therefore, the petitioner has not committed any misconduct as alleged in the charge-sheet dated 07.09.1996. It is submitted by him that as the charge-sheet was issued against the petitioner at the fag end of his service career, departmental inquiry ought not to have been initiated against the petitioner and the charge-sheet ought not to have been issued. It is submitted that charge-sheet dated 07.09.1996 is still pending and no

further action has been taken pursuant to the aforesaid charge-sheet. Therefore, it is requested to allow the present Special Civil Application directing the respondents to pay retiral benefits to the petitioner inclusive of provident fund, gratuity, leave encashment, pension etc.

4. Considering the fact that charge-sheet was issued on 07.09.1996, when this Special Civil Application came up for final hearing on 28.02.2007 and considering the serious allegations in the charge-sheet, this Court directed the respondents to file further affidavit pointing out whether departmental inquiry for which charge-sheet was issued on 07.09.1996 has been concluded or not and if concluded what punishment has been imposed. This Court also further directed the respondents to file reply if the departmental inquiry is not proceeded further, in that case, the reasons for not proceeding with the departmental inquiry and respondent No.2 - Director, Health, Medical Services and Medical Education, State of Gujarat, was directed to remain personally present before this Court. An affidavit-in-reply came to be filed by the Additional Director on 07.03.2007, however, considering the same, this

Court was not satisfied with regard to the affidavit-in-reply. However, it was submitted in the said reply that departmental inquiry has not been concluded. Considering the fact, that by not concluding the departmental inquiry in a case where serious allegations are made, and by not imposing punishment, the petitioner is being paid provisional pension, if departmental inquiry would have been concluded much earlier and ultimately, if some order of punishment would have been imposed, in that case, the petitioner would not have been paid any provisional pension and /or any amount and by not concluding the departmental inquiry at the earliest, there is loss to the public exchequer. Therefore, this Court directed the respondents to inform the Court as to who is responsible for not concluding the inquiry at the earliest. This Court also asked learned Assistant Government Pleader to place on record Circular, Resolution, and or instructions if any, on the aspect of completion of departmental enquiry, issued by the G.A.D. and / or by any other department and apprise this Court as to how and in what manner the departmental inquiries are monitored by higher authorities. Aforesaid direction was issued by this Court as in many of the cases, which came up before

this Court found that either departmental inquiries have been initiated either belatedly and/or after a period of even four years after the employee has retired from service and in many of the cases, even after lapse of many years, departmental inquiries are not concluded. Therefore, the State Government was directed to inform this Court as to how the departmental inquiries are being monitored by its Officers.

5. Commissioner, Health, Medical Services and Medical Education, Gandhinagar, respondent No.2 remained present before this Court and has submitted that in most of the cases in his department, departmental inquiries are monitored by Additional Directors and by him also. He candidly, admitted that so far as the present case is concerned, there is lapse on the part of the department in not concluding the departmental inquiry at the earliest. However, he has assured the Court that departmental inquiry in the present case will be concluded within a period of 3 (three) months from today. Further affidavit-in-reply is filed by him dated 15.03.2007 in which he has given particulars with regard to number of disciplinary cases pending in his department. A

further additional affidavit-in-reply is also filed by the Additional Director producing the circular dated 11.08.2004 issued by the G.A.D. prescribing time limit to conclude the departmental inquiries. It is submitted that as per the said Circular, inquiry, in which the State Government propose to impose minor penalty, is required to be completed within a period of 4 (four) months and inquiries relating to major penalties are required to be completed within period of 12 (twelve) months. With regard to monitoring of departmental inquiries, it is submitted as per the Circular dated 11.08.2004, various stages are provided and the higher authorities are required to monitor the case and recommend appropriate steps which can be taken for early disposal of the inquiry.

6. On considering Circular dated 11.08.2004 issued by the G.A.D., State Government, it provides that inquiry, in which the State Government propose to impose minor penalty, departmental inquiry is required to be completed within a period of 4(four) months and in case Government proposes to impose major penalty, departmental inquiries inclusive of imposing punishment are required to be completed within a period of 12(twelve) months. Heads of the

all the Departments are sent the said Circular, still it is found that departmental inquiries are not concluded within the stipulated time as mentioned in the Circular dated 11.08.2004. Time limit prescribed in the Circular to conclude departmental inquiries within stipulated time has remained only on paper. In Health, Medical Services and Medical Education itself, as per the affidavit-in-reply filed by the Commissioner, Health, Medical Services and Medical Education, Gandhinagar, as on today there are 165 disciplinary cases pending. Out of which 47 cases are of serious nature, in which, some allegations are with regard to dereliction of duty, unauthorized absence and financial irregularities. Six employees have been trapped by A.C.B. Out of the aforesaid 165 cases, 67 cases are pending for more than 1 year. In affidavit-in-reply, it is stated that the cases which are pending for more than one year will be disposed of in time bound manner within a period of next six months.

7. Considering the annexures to the affidavit filed by the Commissioner and the table showing the pending cases, as on today, it appears that there are 98 cases pending in the Health Department, out of

which 72 cases are at present at preliminary inquiry stage. 5 are with regard to minor penalties and in 21 cases, there are serious allegations warranting major penalties, out of which 13 cases are pending for more than 1 year. Similarly, in Medical Department, out of 41 departmental inquiries cases pending, 24 are still at preliminary inquiry stage, out of which 8 are pending for more than one year and there are 17 departmental inquiries pending cases involving serious misconduct warranting major penalties, out of which 14 are pending for more than one year. Similar is the situation in Medical Education Department. 5 cases are pending at preliminary inquiry stage, out of which 4 are pending for more than 1 year and 9 cases are pending involving serious misconduct, out of which 4 cases are pending for more than 1 year. In spite of Circular issued by the G.A.D. for completing the departmental inquiries within stipulated period i.e. within four months so far as minor penalties and within one year so far as major penalties are concerned, still in many cases, they are pending at preliminary inquiry stage. Thus, it appears that the directions issued by the G.A.D., *vide* Circular dated 11.08.2004 to complete departmental inquiry within stipulated time has

remained on paper and they are not strictly complied with and the departmental inquiries are not concluded within stipulated time. By not concluding, departmental inquiries at the earliest, those employees, who have committed some misconduct, are continued in service and they are paid salary. If some are put under suspension, then the Government is required to pay subsistence allowance to them to the extent of 75%. By not concluding the departmental inquiries at the earliest, those persons who have guilty, are made not to suffer any punishment as by the time, the departmental inquiries are concluded, either they are nearer to their attaining the age of superannuation and/or in some cases even they have retired. Considering the facts of the case on the hand, though the charge-sheet has been issued on 07.09.1996, departmental inquiry for whatever reason has not been concluded till date, though *prima-facie*, it appears that serious allegations with regard to tempering the service record are made.

8. Under the circumstances, the respondents are directed to conclude departmental inquiry so far as present case is concerned, within a period of 3 (three) months from today after giving fullest

opportunity to the petitioner and submit the report before this Court. So far as other departmental inquiries pending against employees in the aforesaid departments are concerned i.e. in Health, Medical Services and Medical Education, the respondents are directed to strictly comply with the directions issued in Circular dated 11.08.2004 issued by the G.A.D. and conclude the departmental inquiries within 4 (four) months so far as minor penalties and within 12(twelve) months so far as major penalties, are concerned.

9. Aforesaid directions would be applicable to all the cases pending at preliminary inquiry stage and / or at any other stage, entire departmental inquiries inclusive of imposing punishment should be completed within aforesaid stipulated time. So far as cases of departmental inquiries pending for more than 1 year are concerned, the respondents are directed to act as per the affidavit dated 15.03.2007 of the Commissioner, Health, Medical Services and Medical Education, and conclude and dispose of the same within a period of 6 (six) months from today. With regard to future departmental inquiries, the respondents are directed to strictly comply with the

directions issued by the G.A.D., *vide* its Circular dated 11.08.2004 with regard to conclusion of departmental inquiries.

10. Now so far as the reliefs sought in the present Special Civil Application are concerned, the petitioner is already at present paid provisional pension. Shri Mishra, learned Advocate appearing for the petitioner submitted that so far as provident fund amount of the petitioner is concerned, same cannot be withheld as it is his contribution. Shri Desai, learned Assistant Government Pleader has submitted that appropriate application is not made in prescribed format and the full particulars are not given, and therefore, the petitioner is not paid provident fund amount. He has submitted that on proper application in prescribed format with full particulars, amount of provident fund can be released in favour of the petitioner within one month from such application. Under the circumstances, on proper application in the prescribed format with full particulars with regard to release of provident fund amount, the respondents are directed to release provident fund amount in favour of the petitioner within a period of 4 (four) months of such

application. In view of the allegations in the charge-sheet, the petitioner is not entitled to any other reliefs with regard to other retiral benefits. However, in the fitness of things, the respondents are directed to complete the departmental inquiry within a period of 3 (three) months from today. No case has been made out by the petitioner to quash and set aside the charge-sheet dated 07.09.1996 and whatever the defence available to the petitioner, the petitioner can point out during the departmental inquiry and make his submissions, which can be dealt with in accordance with law and on merits. Merely, because the charge-sheet has been issued at the fag end of his service is no ground to quash the charge-sheet, which has been issued before the petitioner has retired.

11. For the reasons stated above, the petition succeeds in part. The respondents are directed to act as per the directions issued hereinabove. Rule is made absolute to the aforesaid extent. However, there shall be no order as to costs.

[M.R.Shah, J.]

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